

HAMPTON PLANNING BOARD – MINUTES  
January 18, 2006 – 7:00 PM

**PRESENT:** Tracy Emerick, Chairman  
Tom Higgins, Vice Chairman  
Fran McMahon, Clerk  
Cliff Pratt, Selectman  
Keith Lessard  
Bob Viviano  
Bill Bilodeau, Alternate  
James Steffen, Town Planner

**ABSENT:** Tom Gillick

Chairman Emerick began the meeting at 7:00 PM by introducing the Board members. Mr. Bilodeau led the Pledge of Allegiance to the flag.

**I. PUBLIC HEARING FOR ZONING ORDINANCE AMENDMENTS**

1. Amendment to the Town Zoning Ordinance, Articles as follows:
  - Amending Section 1.6 Definitions to add a new definition for Floor Area Ratio;
  - Amending Section 2.1 Zoning Map to add an overlay district titled North Anchor (Main Beach) Overlay District; and,
  - Amending Article IV DIMENSIONAL REQUIREMENTS to add a Maximum Floor Area Ratio = 4 requirement.

Mr. Steffen explained that this was the second public hearing on the proposed amendments. He recited the definition of Overlay District that has been added to the proposed amendment. “The North Anchor Overlay District – 4” is new wording. The term “Main Beach” is eliminated. Wording has been revised in describing the “District”. Wording was added under Article 4.9, clarifying that the FAR 4 applies to above ground floor area only.

**BOARD**

The Board discussed the changes, their intent and examples of their application.

It was explained that these changes were intended to be a first step in modifying the zoning on the beach. It is intended that other changes, with Floor Area Ratios below 4, will be adopted in the future.

**PUBLIC**

Arthur Moody, 3 Thompsen Road, stated that, in his opinion, this proceeding was dead in the water because wording changes to the zoning ordinance were not properly posted, and January 17<sup>th</sup> was the deadline for the final hearing.

Victor Lessard, 100 Timber Swamp Road, asked if this public hearing was timely and legal. He stated that he is concerned that there is not a clear understanding of the proposed changes. He asked if any of tonight's changes were the result of a meeting that took place among several individuals in the Town offices. His concern is that anything approved tonight would have the force of law at Zoning Board meetings beginning tomorrow.

There was discussion of the deadline date for public hearings, by law.

In response to Mr. Moody's statement, Mr. Steffen stated that the Board has the authority to make editorial changes and textual modifications to the proposed amendments at this hearing.

Warren Bambury, 21 Gill Street, stated that there appears to be confusion about this proposal. He stated the Hampton Beach Area Commission would be glad to host any additional meetings needed to explain the proposed changes. The Commission will welcome any input and answer any questions from the public on these proposals. In response to a request from the Board, Mr. Bambury stated that it would be overwhelming to try to add FARS (Floor Area Ratios) 1-4 this year, and that is why they came forward with only a FAR4 this year. He stated that the advantage of a FAR4 zone is that it is designating a specific portion of the beach for large structure development.

Mr. Higgins read from the RSAs, in response to Mr. Moody's statement, that the full text of proposed amendments need not be included in the public notice.

Victor Lessard, 100 Timber Swamp Road, stated that the concept is clearer now, but he is concerned with the impact of the proposed changes.

Arthur Moody, stated that Hampton Beach has had its own zoning since 1949. He also stated that Mr. Higgins was reading from the wrong page of the RSAs. Mr. Moody read 675.3 of the RSAs. He stated changes made after the first meeting was not done by vote as required by law.

Mike Scanlon, 4 J Street, stated these proposed changes are increasing the complexity of getting variances from the Zoning Board. He stated the higher you go (with a structure), the deeper you have to dig. He said it is an issue now that Indian artifacts are being uncovered when digging occurs.

Geaninna Scanlon, 4 J Street, said that she wanted to address two sections:

- 1) She proposes to change "North Anchor Overlay" to "North Anchor Commercial Overlay". She described her rationale for this recommendation.

- 2) She is concerned that if these proposed amendments are voted in, we will be inviting an increase in the number of variances requested and the number of appeals of variances. She also feels that more clarification is needed to increase understanding of these proposed changes.

Mr. Lessard confirmed that if the Planning Board adopted these changes tonight, they would have the force of law until Town Meeting vote.

## **BOARD**

Mr. Steffen stated that the Board needs to act on the proposal tonight. He stated that Mrs. Scanlon's recommendations to add the word "Commercial" and to change "shall comply" in the description are good ones. Mr. Higgins stated he feels this would be a major change in meaning.

Mr. McMahon recommended a change to the definition to add "buildable portion of a lot".

**MOVED** by Mr. Viviano to approve the following changes:

- Add the definition of Overlay District.
- Change the description to "North Anchor Overlay District – 4" and eliminate "main beach".
- Revise wording in describing the "District".
- Add wording under Article 4.9, clarifying that the FAR 4 applies to "above ground" floor area only.

**SECOND** by Mr. Bilodeau

**VOTE:** 7-0-0

**MOTION PASSED**

- Amending Section 1.6 Definitions to add a new definition for Floor Area Ratio;
- Amending Section 2.1 Zoning Map to add an overlay district titled North Anchor (Main Beach) Overlay District; and,
- Amending Article IV DIMENSIONAL REQUIREMENTS to add a Maximum Floor Area Ratio = 4 requirement;

**MOVED** by Mr. Viviano to table this article for further study.

**SECOND** by Mr. Bilodeau

**VOTE:** 6-1-0

**MOTION PASSED**

- Amending Article III USE REGULATION for certain categories to prohibit residential use at the street level for properties along Ocean Boulevard between lettered streets A-N.

Mr. Steffen described the intent of this proposal. The only change since the first public hearing is that the section of Ocean Boulevard involved will begin at Ashworth Avenue instead of A Street.

Victor Lessard asked, as an example, if an existing hotel could be rebuilt as is. It was agreed that it could.

Arthur Moody said that the Board left out Section 3.27.1. He asked if that means that a business proprietor could not have his or her residence on the first floor.

The Board briefly discussed this and decided that if the residence was in the back and not utilizing frontage it would be legal.

Mike Scanlon stated that the Hampton Beach Area Commission is an advisory body. The proposed amendment is minutiae and the desired outcome already exists.

Geaninna Scanlon stated that if a property manager has its own office on the first floor, this would meet the requirement but it does not do anything to increase the vitality of the beach.

**MOVED** by Mr. Lessard to recommend that this proposed amendment go forward.

**SECOND** by Mr. Viviano

**VOTE:** 7-0-0

**MOTION PASSED**

- Amending Section 6.3 Parking Requirements to add a parking requirement for condominium conversions.

Mr. Steffen read the proposal and noted that the Town Attorney recommended a couple of wording additions:

Article 4 – Are you in favor of the adoption of Amendment No 2 proposed by the Planning Board to amend the Zoning Ordinance by adding a requirement that for condominium conversions of pre-existing non-conforming uses each unit shall have at least one (1) **assigned** legal parking space on-site? (The word **assigned** added)

Section 6.3.10 Condominium Conversions of Pre-existing Non-conforming Uses: At least one (1) assigned 9' x 18' **parking** space per unit must be provided on-site. (The word **parking** added)

## **PUBLIC**

No Comment

## **BOARD**

Mr. Lessard indicated that we would probably see litigation on this change.

**MOVED** by Mr. Pratt to accept the changes to the proposed amendment.

**SECOND** by Mr. McMahon

**VOTE:** 6-1-0

**MOTION PASSED**

**MOVED** by Mr. Pratt to recommend that the proposed amendment go forward.

**SECOND** by Mr. McMahon

**VOTE:** 6-1-0

**MOTION PASSED**

2. Amendment to the Town Zoning Ordinance, Petitioned Articles as follows:

- Amending Section 2.1 Zoning Map to rezone land on the northerly side of Exeter Road west of I-95 from Residence AA to Industrial.

## **PUBLIC**

Peter Saari, Casassa & Ryan, representing the landowner stated that the owner had received a variance to put an industrial building in this back section of his lot. He stated that the area is not suited as an RAA area. He said that if someone came in with an industrial project for that land, it would have to come before this Board. He posed the question “what does this Town need more of – industrial land or residential land?”

Victor Lessard asked what piece of land was involved. This was described using a map prepared by Mr. Steffen. It was noted that the entire parcel was in single ownership.

## **BOARD**

**MOVED** by Mr. Lessard to not recommend this proposed rezoning.

**SECOND** by Mr. Viviano

**VOTE:** 5-2-0

**MOTION PASSED**

- To adopt an Interim Growth Management Ordinance as per State Law, RSA 674:23 and repeal the existing Impact Fee Ordinance.

Chairman Emerick said the Board owed this petitioner an apology for some misinformation that was provided with respect to changes to her petition. The Board has since received an opinion from Town Counsel that changes cannot be made to petitioned articles after they are submitted.

## **PUBLIC**

Patricia Antlitz, 14 Bourn Avenue, stated that it has been difficult getting information and guidance, when seeking it, in the course of developing this petition. She stated that the full text of the petition should have been available as published. She stated that there does not appear to be a vision or master plan for the Town as a whole as there is for the beach area.

Tammy Deland, 12 Bourn Avenue, said she understands the Board has to go forward with her original petition. She asked if a multi-family building permit could involve multiple dwelling units. She said that she had used the word “replace” rather than

“repeal”, with respect to the current School Impact Fee. She indicated that her use of the word “interim” was an error.

Victor Lessard said the three newer developments on Drakeside Road paid approximately 7% of the Town (non-school) portion of the budget last year.

Patricia Antlitz stated they are not proposing to stop growth, merely to control growth. Towns that are most developed also have the highest taxes. Also, private services are more expensive, such as the recent Aquarion price increase for water because of the seven new wells that were needed to service the Town population. She believes that we need to be more pro-active as a town in controlling growth. She believes that the people of the Town want to see a growth ordinance in place.

Mike Scanlon spoke, giving his opinion on legal matters.

Tammy Deland asked why Mr. Steffen did not call her this afternoon when he found out from Counsel that the revised proposal could not go forward.

Arthur Moody said that the published legal notice stated the full text of the proposed zoning amendment changes were available at the library and the town offices. He then read the applicable RSA. He stated that he still didn’t know how the two public petitions read.

## **BOARD**

Mr. Steffen apologized for not getting the full text of the proposed zoning amendment changes to the Library. Once it was called to his attention, he did deliver it to the Library and it was there at least one week in advance of the meeting. The text was available at the Town offices and all notices were legal to the best of his knowledge. He said he wished he could have helped Ms. Deland, but was told that it was not Town policy for staff to assist the public with private petitions.

**MOVED** by Mr. Lessard, regrettably, to not recommend this proposal.

**SECOND** by Mr. Higgins

**VOTE:** 7-0-0

**MOTION PASSED**

## **NEW PUBLIC HEARINGS**

6-11 (Amended) Delvin Arnold  
12-lot Subdivision at  
111 Exeter Road  
Map 107 Lot 24  
Owner of Record: Delvin Arnold

Mr. Peter Agrodnia of NorthEasterly Surveying presented this application. He stated that as of August 2005 there was conditional approval of the proposal. Following this, there was litigation. Mr. Agrodnia said that the issues involved were primarily soils and

wetlands. Mr. Arnold allowed the abutters' soil consultant onto the property to re-delineate the wetland. He said that the abutters' scientist agreed with the applicant's scientist. There was a question as to the buffer area. He noted that there was a change to the ordinance in March of last year, changing the definition of buffer to include very poorly and poorly drained soils. That created a problem for them. It was determined that there is an area containing poorly drained soils that do not meet the criteria to be defined as wetland. This occurred on the formerly proposed Lot 12. As a result, the developer has eliminated Lot 12.

The other issue was that there is one remaining item from the Ambit Engineering review. Mr. Agrodnia stated that they would make the Ambit recommended change if the Board so wishes.

## **BOARD**

No questions.

## **PUBLIC**

Craig Salomon, Attorney representing abutter Tammy Deland, said that he was on the Planning Board when the definition of wetland was drafted. He stated that, from his own experience growing up on Bourn Avenue, and his client's current experience, there is land on Lot 6 that is wet 7 to 9 months of the year. He stated Lot 6 has a limited buildable area. The driveway for Lot 11 goes through the buffer. Thirdly, there is no agreement between his client and the applicant to a buffer for noise and glare. He then discussed drainage. Failure of the future owners to maintain drainage protection will have a negative effect on residents of Bourn Avenue.

Tammy Deland wanted to know if this project had to go back to the beginning. Chairman Emerick said it did not have to go through the cycle again because it is a less dense project than previously proposed.

Craig Salomon stated that they had agreed to postpone the court case until the Board heard this amended proposal. There was no remand by the Court. He stated he was not aware of a provision of the Subdivision Regulations that, because a project was less dense, it was not a new proposal. Chairman Emerick indicated that this was the Board's policy as it has been dealing with this type of situation through time.

Maureen Mazurkewitz, 95 Exeter Road, said she was a new owner and asked how the project would affect her property. Mr. Agrodnia said there would be lot next to her and a single-family home on that lot. She stated that she would like some sort of buffer between the new lot and her property.

Patricia Antlitz, 14 Bourn Avenue, said that the abutters had previously raised concerns about Lots 6, 11 and 12. She asked if there were other poorly drained soils issues on other lots. Mr. Agrodnia said that they did go over the whole area evaluating the soils.

Allen Cusano, 102 Exeter Road, said issues regarding surveying and buffering his property have not been addressed. It was explained that the project has been delayed because of the litigation.

## **BOARD**

Chairman Emerick asked if the applicant is looking for approval of this modified plan with all previous conditions remaining in place.

Attorney Charles Griffin stated that issues raised by Attorney Salomon tonight were addressed last year, and the only issue before the Board tonight was a proposal for an 11-lot, rather than a 12-lot subdivision.

Mr. Lessard asked where the granite wetland markers appeared on the plans. There was discussion of the markers to be used for wetland delineation.

Mr. Lessard asked about including a condition to provide a buffer for the abutter at 95 Exeter Road.

Mr. Agrodnia indicated that the reconfiguration of the lots has resulted in drainage changes. There is less impact on the wetlands.

## **BOARD**

**MOVED** by Mr. Pratt to approve the amended subdivision application at 111 Exeter Road, Map 107, Lot 24, with all previously established conditions and the following stipulations:

- Compliance with the Conservation Commission's letter of April 26, 2005 and its stipulations checklist
- Impact fee for a single-family structure of \$3,641 per dwelling unit shall be due at the time of application for building permits.
- The Board defines "active and substantial" for the purposes of RSA 674:39 as after completion of roadwork (less final coat), utilities and drainage (within 12 months of final approval).
- Establish surety and inspection fees for roadway, monumentation, street lamps, utilities, and drainage to the satisfaction of the Department of Public Works.
- Street naming form shall be submitted to the Board of Selectmen prior to final approval.
- The final lot numbers will be verified with the Assessing office prior to recording.
- Installation of monumentation per final plan set and submittal of Certificate of Monumentation prior to release of surety.
- Prior to final approval, the applicant shall submit final plans, recordable Mylar, and applicable recording fees.
- Provision of an acceptable fence for abutter Cusano in a location acceptable to him and the Department of Public Works and that meets all applicable building regulations.



- Notes will be added to the final plans for all of the detention ponds and drainage swales that grant the Town rights to inspect and repair if the landowner fails to meet the obligation.
- Note 4 on Sheet S-2 will be revised to reference Lots 4, 5, 6 and 7 in the sewer easement.
- There will be a 10-foot no-cut zone for Lot 10 along the southerly property line.

**SECOND** by Mr. Lessard

**VOTE: 6-1-0**

**PASSED**

**MOTION**

### **CONTINUED PUBLIC HEARINGS**

Chairman Emerick announced that, it being 9:55 PM, the next application would be the last to be heard tonight. The remainder of the applications would be heard in the same order at the next meeting.

5-1      Pond Side LLC c/o Malcolm Smith  
3-lot Subdivision Review at  
195 & 201 Woodland Road  
Map 95 Lot 2 and Map 96 Lot 3  
Owner of Record: Pond Side LLC c/o Malcolm Smith  
*Jurisdiction Accepted December 7, 2005*

Mr. Jeffrey Clifford, Altus Engineering, and Amanda Barker, NH Soil Consultants, presented this application. Mr. Steve Slovenski, Attorney, was also present, representing the applicant.

Mr. Clifford said that the nearest fire hydrants are 400 feet in one direction and 500 feet in the other direction on Woodland Road. Mr. Steffen indicated that the Fire Department was satisfied with this.

He indicated that they have shown “the square” with respect to frontage on Lot 3. They have added Note 10 on Sheet 1, regarding limiting the use of pesticides to protect Ice Pond. Note 9 speak to Conservation Commission issues that were addressed.

It was determined that the Board was not provided with the correct set of plans, since the notes being referenced do not appear on the plans before the Board.

Mr. Clifford said he hoped he could sit down with the Planner to determine where wetland boundary markers need to be placed and have that as a condition of approval.

Mr. Pratt said that the Board should make it a stipulation of approval that the Planner and the Conservation Commission Chairman should determine where markers need to go.

Mr. Clifford said they got comments from Ambit Engineering yesterday. He went over the Ambit comments and Altus' response to those. He discussed the addition of a note referencing dam maintenance responsibilities. He discussed Lot 3.

Sight distance is another issue. The road is posted for a maximum speed of 30 MPH. Based on where the driveways are planned, they anticipate approximately 300 feet of sight distance.

Mr. Clifford spoke about sewer to Lot 2. They had proposed putting a cleanout on Lot 2. DPW likes the proposal better than an alternate solution. He feels they now have a project that meets all Town and Board requirements and they are looking for approval.

## **BOARD**

Mr. McMahon asked if current conversations regarding this land have any bearing on this proceeding. Chairman Emerick said they are separate activities.

## **PUBLIC**

Robert Casassa, representing the abutters at 183 Woodland Road, asked about Note 9. He asked if it is better to recite what the Conservation Commission is trying to accomplish, rather than referencing a section of the ordinance that could change in the future.

## **BOARD**

Mr. Lessard suggested the Note state "Section 2.3.4 (as of this date)"

There was discussion of Note 10 regarding limited pesticide use.

There was a discussion of a restriction on tree cutting. She noted that photo survey of the site could be submitted at time of building permits. Ms. Barker indicated that the cutting restriction could be added to Note 10.

Mr. Steffen went over other conditions to be added to an approval.

**MOVED** by Mr. Pratt to approve a 3-lot subdivision at 195 & 201 Woodland Road, Map 95 Lot 2 and Map 96 Lot 3, subject to the following conditions:

- An impact fee in the amount of \$3,641.00 per dwelling unit (for a single-family home) is required when filing building permit applications.
- The final lot numbers shall be established with the Assessor's office prior to recording.
- Prior to final approval, the applicant shall submit a Certificate of Monumentation (for all corners), final plans, a recordable Mylar and appropriate recording fees.
- The buffer shall remain in its natural vegetative state as stated under 2.3.4 of the Wetland Conservation District buffer definition. There will be no fill for

- landscaping purposes. Where existing, a natural woodland buffer will be maintained within 50 feet of the flagged wetland line.
- Granite boundary markers will be placed at the appropriate points as agreed upon by the Conservation Commission Chair and the Town Planner.
  - Wetland Conservation District markers will be placed at the 50-foot buffer line at the owner's expense.
  - Tree cutting in the 50-foot buffer is limited to 50% of the basal area of trees and 50% of the total number of saplings in a 20-year period. A photo survey will be submitted with applications for building permits.
  - All tree cutting is prohibited within the limits of the jurisdictional wetlands unless cutting is necessary as part of a Special Permit approved by the Planning Board.
  - The wording of Footnotes 9, 10, 11 and 12 will be agreed to by the Town Planner and the Conservation Commission Chair.

**SECOND** by Mr. Bilodeau

**VOTE: 5-2-0**

**MOTION PASSED**

The following applications were continued to the February 1, 2006 meeting of the Planning Board:

- 5-50 Dave Snow  
2-Lot Subdivision at  
34 Mill Pond Lane  
Map 150 Lot 2  
Owner of Record: Helen and George Snow  
***Jurisdiction Accepted December 7, 2005***
- 5-38 Maplecroft Building & Development LLC  
Site Plan Review at  
18-20 Keefe Avenue  
Map 290 Lots 68 & 69  
Waiver from Subdivision Regulations Section VII.C.5 (Peak rate of runoff)  
Owner of Record: Twenty Keefe Ave Realty Trust, John Kopka III  
***Jurisdiction Accepted: November 2, 2006***
- 5-39 Jones & Beach Engineers, Inc.  
Special Permit at  
20 Keefe Avenue  
Map 290 Lots 68 & 69  
Owner of Record: Twenty Keefe Ave Realty Trust, John Kopka
- 5-02 Elaine & Fred Ayotte  
Site Plan Review at  
465 Ocean Boulevard  
Map 266 Lot 31  
Owner of Record: Elaine & Fred Ayotte  
***Jurisdiction Accepted: September 7, 2005***

III. CONSIDERATION OF MINUTES of December 21, 2005 and January 4, 2006

It was the consensus that minutes will be reviewed at the next meeting.

**MOVED** by Mr. Lessard to adjourn

**SECOND** by Mr. Bilodeau.

**VOTE:** 7-0-0

**MOTION PASSED**

Meeting adjourned at 10:25 PM.

Respectfully Submitted,  
Barbara Renaud  
Planning Board Secretary